

## REMARKS

The Applicant provides the following remarks for consideration in further examination of the present application.

### Claim Rejections under 35 USC §101

Applicant previously elected to prosecute claims 42-48. Claims 42-48 were rejected in the Office Action dated March 4<sup>th</sup>, 2010, under 35 U.S.C. §101, as being directed to non-statutory subject matter.

Applicant directs the Examiner's attention to the recent Supreme Court decision in *Bilski v. Kappos*, 130 S. Ct. 3218 (2010), rendered after the Examiner's present rejection, wherein the Supreme Court, inter alia, favorably cited its prior decision in *Diamond v. Diehr*, 450 U.S. 175 (1981), as showing a patent eligible method. As in *Diamond v. Diehr*, the present claimed invention performs a control function affecting a specific problem. In the claimed invention, a property manager or property owner (depending on the claim) is identified by "successively reviewing increasingly more general descriptions of the management affiliation of the property" AND "at least part of the service request from the service requestor" is then relayed to the identified property manager or property owner as claimed. Meaningful limits, and not a mere field of use, are imposed by the requirement of successively reviewing increasingly more general descriptions of the management affiliation AND relaying at least part of the service request from the service requestor to the identified person in order to address the service request. This is very much akin to the programmed computer in *Diamond v. Diehr* wherein the timing for curing rubber in a mold was determined by a computing device AND the determined time was used to control the curing of rubber, thereby solving a specific real world problem with a patent eligible process. For this reason, Applicant asserts that the present claimed invention, as previously amended, passes the machine-or-transformation test and is therefore patent eligible.

Applicant further directs the Examiner's attention to *Bilski*, wherein the Supreme Court stated that "[t]he machine-or-transformation test is not the sole test for patent eligibility under §101." Other tests to determine patentability must be applied if the Examiner maintains rejection of claims 42-48 under the machine-or-transformation test and such tests were not applied in the

Office Action of March 4<sup>th</sup>, 2010. Applicant also directs the Examiner's attention to the *Interim Guidance for Determining Patent Eligibility for Process Claims in View of Bilski v. Kappos*, 75 FR 42922 (2010), for support of Applicant's remarks herein.

Therefore, because the claimed invention passes muster under the machine-or-transformation test and/or other tests for patent eligibility were not applied as is now required by *Bilski*, Applicant respectfully asserts that the present claimed invention is patent eligible under 35 USC §101.

Claim Rejections – 35 U.S.C. § 103(a)

Claims 42-48 were rejected in the Office Action dated March 4<sup>th</sup>, 2010, under 35 U.S.C. §103(a) over U.S. Pat. No. 6,990,458 to Harrison et al. ("Harrison"). Applicable to the these rejections, Applicant respectfully brings to the Examiner's attention that the Supreme Court stated in *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (quoting *In Re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)):

“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support he legal conclusion of obviousness.”

The pending obviousness rejections are all premised on the claims containing “non-functional descriptive material,” but these rejections completely ignore the interconnected functional steps of the claims. The service request of the present invention is different from that of Harrison because it is required to be “associated with a property having a management affiliation.” Harrison is concerned with cable television subscribers. Harrison col. 1, ll. 28-29. Contrary to the holding of *KSR*, The Examiner has not articulated, nor can Applicant identify, anything in Harrison that differentiates a function based on a management affiliation. Even if some management affiliation were to exist, nothing in Harrison discloses or suggests it is capable of being successively reviewed as recited in the claims to identify property manager or property owner as recited in the claims. Thus, Harrison is incapable of “identifying, with the property

management system, a property manager by successively reviewing increasingly more general descriptions of the management affiliation of the property until a property manager or property owner (as recited in the claims) is identified". Clearly, the required management affiliation of the property is functional as it is central to identifying the property manager or property owner (as recited in the claims). Importantly, the identify of the claimed property manager or property owner is necessary to "relaying at least part of the service request from the service requestor to the" property manager or property owner as claimed. Therefore, Harrison is incapable of performing the claimed steps.

To further illustrate why Harrison does not render obvious the claimed invention, consider that in Harrison the subscriber may be a home owner, *see* Harrison col. 5, l.65 to col. 6, l. 2, so identifying and relaying at least part of the service request from the service requestor to the property owner makes no sense because it was the property (home) owner that created the service request! As a home owner, there usually is no separate management affiliation. Home owners are personally responsible for their homes and do not need to identify themselves nor send service requests to themselves. As compared to Harrison, both the problem of identifying management affiliation and its solution are unique to the present invention of managing property. Exactly who is responsible as property manager for the service request is not always immediately clear because it can depend on the hierarchy of the property management entity as described in the present patent application. For example, *see* Figure 4 and corresponding paragraphs 47 and 48. Applicant asserts that the step of "identifying, with the property management system, a property manager by successively reviewing more general descriptions of the management affiliation of the property. . ." is clearly a functional claim limitation, not appearing in Harrison and therefore the basis for this rejection has been overcome.

Further illustrating the differences between Harrison and the claimed invention, Harrison discloses that "[i]n a preferred embodiment, subscribers 108 communicate solely with service representative 112, while the technicians 110 communicate primarily with dispatcher 114." Harrison, col. 3, ll. 42-45. The service representative 112 and dispatcher 114 do not exist in the claimed invention and removing them from the process is both beyond the disclosure of Harrison and potentially advantageous in terms of not just speed, but also cost, accuracy, reliability, etc. The present invention enables both the service request data entry person 112 and the dispatcher

114 positions to be completely automated and eliminated, thereby resulting in far greater efficiencies and eliminating error associated with these positions.

Therefore, for the reasons given, Applicant asserts that claims 42-48 are not rendered obvious by Harrison.

Remarks directed primarily to claim 43

Claim 43 was rejected in the Office Action dated March 4<sup>th</sup>, 2010, under 35 U.S.C. §103(a) over Harrison. In that rejection, the Office Action states Harrison “does not (t)each the identifying step is a hierarchical tree traversal search through successive hierarchical levels towards the root of a hierarchical tree.” The Examiner then finds the search utilized in Harrison et al. is functionally equivalent to a hierarchical tree traversal since the two processes achieve the same goal and reach the same result, i.e., the identification of the appropriate person to fulfill the request.

Applicant respectfully points out that the Examiner has acknowledged the search is functional, lending further support to Applicant’s assertions that the limitations of claims 42-48 are functional. However, the Examiner’s reasoning that because the process of Harrison and the process of the claimed invention “achieve the same goal and reach the same result” they must be the same is clearly wrong both in its basis and its conclusion. Regarding the basis, as described above, Harrison and the claimed invention do NOT “achieve the same goal and reach the same result.” Harrison is incapable of “successively reviewing increasingly more general descriptions of the management affiliation of the property,” so they do not achieve either the same result or goal. Regarding the conclusion, by analogy, one may drive between two different cities or fly between two different cities, but just because both processes “achieve the same goal and reach the same result” does not mean flying and driving are the same. Thus it is nonsensical to say Harrison and the claimed hierarchical tree traversal search are the same by this reasoning. Referring to *KSR Int’l*, the Supreme Court cautioned against precisely this kind of rejection when the Court stated that rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some “articulated reasoning with some rational underpinning” to support the legal conclusion of obviousness.


Therefore, for the reasons given, Applicant asserts that claim 43 is not rendered obvious by Harrison.

Conclusion

Applicant respectfully asserts that all pending claims are patent eligible and allowable over Harrison, and Applicant earnestly requests an indication of allowability.

If the Examiner has any additional questions or comments, she is encouraged to contact Mark A. Thomas, Reg. No. 37, 953, in lieu of Robert C. Rolnik. Reg. No. 37,995.

Respectfully submitted this 4<sup>th</sup> day of August, 2010.



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